IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5174 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GSRTC

Versus

NC VANKAR

Appearance:

MRS VASAVDATTA BHATT for Petitioner

MR JS BRAHMBHATT for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 20/04/2000

ORAL JUDGEMENT

Learned advocate Ms.Bhatt is appearing for the petitioner corporation. Learned advocate Mr.Brahmbhatt is appearing for the respondent workman.

Rule, service of which is waived by Mr.Brahmbhatt, the learned advocate appearing for the respondent workman. On the facts and in the circumstances of the case, the matter is taken up for final hearing today itself.

In this petition, the petitioner has challenged the judgment and award dated 27.2.1998 passed by the labour court, Baroda in Reference No. 15 of 1995. The facts giving rise to the present petition, in short, are as under:

The respondent was working with the petitioner as a conductor. On 15.8.1986, the bus conducted by the respondent workman was checked by the checking party and during the course of checking, it was found that the respondent had collected the bus fare but had not issued tickets. The respondent was, therefore,served with the chargesheet and, thereafter, regular departmental inquiry was held against him. At the end of the departmental inquiry, the competent authority stopped two increments of the respondent workman with permanent recurring effect. Said order passed by the competent authority against the respondent was challenged by the respondent by filing the first appeal. The first appellate authority (Review Authority) reviewed the case and passed the order of dismissal from service instead of deciding the first appeal preferred by the respondent against the order of stoppage of two increments passed by the competent authority. Against the order passed by the reviewing authority, the respondent workman had preferred the second appeal before the Second Appellate Authority and the Second Appellate Authority set aside the order passed by the First Appellate Authority. Against the order passed by the Second Appellate Authority, industrial dispute was raised by filing the aforesaid reference which came to be allowed by the labour court by giving directions to the petitioner corporation. Feeling aggrieved by the award passed by the labour court, the petitioner has filed the present petition before this Court.

Before the labour court, statement of claim was filed by the respondent workman and the written statement thereto was filed by the petitioner. Thereafter, the matter was examined by the labour court on merits. Before the labour court, it was the case of the respondent workman that he was not well on the date of the incident and that while he was doing the road booking and the way bill was yet open, the bus was

checked and that the competent authority has rightly considered the defence of the respondent and issued punishment of stoppage of two increments with permanent effect but the reviewing authority has illegally reviewed the case. The tribunal, after appreciating the facts and circumstances of the case and evidence on record, has come to the conclusion that there was no reason to review the case of the respondent and that no reason was assigned by the reviewing authority for reviewing the order passed by the competent authority as to why the case require review and, therefore, the tribunal has come to the conclusion that the punishment which has been imposed by the reviewing authority itself is illegal, unjust and improper and it amounts to victimization and has also come to the conclusion that the punishment which was imposed by the competent authority is required to be restored and the punishment imposed by the reviewing authority is required to be set aside. The tribunal has, therefore, while setting aside the order passed by the reviewing authority, restored the original punishment of stoppage of two increments with permanent effect and has also granted the back wages for the intervening period from the date of dismissal28.7.1987 to 18thNovember,1991 and has directed to pay the difference of arrears of salary to the respondent workman setting aside the order of punishment of putting him in the minimum scale of the post of conductor.

Learned advocate Ms. Bhatt has submitted that the tribunal has committed an error in not considering the past record of the respondent workman. She has submitted that in past, in all, 16 defaults were committed by the workman and most of such defaults are in relation to non recovery of fare and non issuance of tickets and in past, for such defaults, punishments were imposed by the corporation. She has further submitted that the tribunal has interfered with the punishment imposed by the revisional authority without any jurisdiction and therefore, the impugned award passed by the tribunal is required to be quashed and set aside.

On the other hand, learned advocate Mr. Brahmbhatt has submitted that this court is having very limited power and jurisdiction. He has submitted that while appreciating the impugned award passed by the tribunal, this court cannot act as an appellate authority and cannot reapreciate the evidence which was led before the tribunal while exercising the powers under Article 226 and/or 227 of the Constitution of India. He has submitted that the tribunal is right in considering the facts and circumstances of the case that once the

competent authority has imposed the punishment looking to the misconduct and evidence led in the departmental inquiry, then, the reviewing authority is required to justify the interference in the said order of punishment and the reviewing authority has not given any reason or justification for such interference and after reviewing the same, punishment of dismissal from service has been imposed by the reviewing authority during the pendency of the departmental appeal against the imposition of stoppage of two increments with cumulative effect and, therefore, the reviewing authority has erred in exercising the power and the same has been corrected by the tribunal. According to him, therefore, the tribunal has not committed any error while passing such order and the tribunal has rightly restored the original order of punishment. He has,therefore, submitted that in past, no allegation of dishonesty and misappropriation have been levelled against the workman and in respect of such past defaults, in almost cases, fine of Rs. 3.00, Rs.2.00, Rs.3.00 etc. were imposed by the corporation in past and in present incident, two annual increments were stopped by the competent authority with recurring effect and except that, no other punishment was imposed in past and therefore, this court should not interfere with the impugned award while exercising the powers under Article 226 and/or 227 of the Constitution of India.

I have heard the learned advocates for the parties. I have also perused the entire impugned award passed by the tribunal.

Learned advocate Mr. Brahmbhatt has, on suggestion being made by the Court, has fairly submitted that he has no objection if the impugned award is modified in so far as it relates to back wages by reducing it to 50 and the petitioner is directed to implement the modified award of reinstatement with 50% of the back wages with all other consequential benefits and instead of full back wages for interim period. He has submitted that his consent may be recorded for such concession and, therefore, considering the consent given by Mr.Brahmbhatt,learned advocate for the respondent to reduce the amount of back wages and difference of salary upto 50%, learned advocate Ms. Bhatt has submitted that the award may be modified in so far as it relate to the back wage as aforesaid without disturbing the part of reinstatement of the respondent workman.

In view of the above, the award in question is required to be modified by directing the petitioner corporation to reinstate the respondent workman in

service with 50% of the back wages for the intervening period and difference of arrears of salary of the punishment of minimum time scale shall be required to be reduced to 50% instead of full wages and full arrears and difference of salary.

Accordingly, the award in question is modified to the effect that the direction of the tribunal dated 27th February,1998 is confined to 50% of the back wages and difference of arrears and salary and is modified as under:

Accordingly, the petitioner corporation is directed to set aside the punishment order dated 18th November, 1991 to put the respondent in minimum time scale for thepost of conductor and restore the punishment of stoppage of two annual increments with cumulative effect and the petitioner corporation is directed topay 50% back wages for the interim period from the date of dismissal 28.7.1987 to 18.11.1991 and also topay 50% of the arrears of difference of salary for setting aside the punishment of putting him in the minimum time scale of the post of conductor. Petition is allowed to the aforesaid extent with no order as to costs. Rule is made absolute in terms indicated hereinabove.

In view of the above, in the interest of justice, the petitioner corporation is directed to implement the impugned award as modified hereinabove within six weeks from the date of receiving certified copy of this order.

20.4.2000. (H.K.Rathod,J.)

Vyas